IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1419 of 1997

in

SPECIAL CIVIL APPLICATIONNo 6436 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI RAMJIBHAI

Versus

DY EXECUTIVE ENGINEER

Appearance:

MRS DT SHAH for Appellant

M/S.VYAS ASSOCIATES for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 23/03/98

ORAL JUDGEMENT

1. This appeal is filed against a judgment and order passed by the learned Single Judge in Special Civil application No.6436 of 1990, on July 30, 1997. That petition was filed by the appellant-petitioner against an

award passed by the learned Presiding Officer, Third Labour Court, Rajkot, on September 26, 1989, in Reference (LCR) No.465 of 1987.

2. The appellant was working with the District Panchayat, Surendranagar. It was his case that, he was employed as a daily wager labourer by the respondent since May 1982. His services were orally terminated on June 21, 1986. Being aggrieved by the said order, he approached the authorities and, accordingly, a reference was made. Two contentions appeared to have been advanced before the Labour Court: (1) violation of provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and (2) violation of provisions of Section 25G of the Act.

3. Appreciating the evidence on record, the Labour Court held that it was not proved that the workman had completed 240 days in any year prior to his discharge from service as contended by him and, hence, it was not proved that there was violation of Section 25F of the Act and, accordingly, that prayer was rejected.

4. Regarding violation of Section 25G, it was observed as under :-

> "There is no proof on record that the opponent engaged any person named Bijal in his place. The bare word of the workman on this point cannot be relied upon."

Accordingly, even that contention was also negatived and Reference was dismissed.

5. Being aggrieved by the award, above petition came to be filed, which was also dismissed by the learned Single Judge observing that no error of law was committed by the Labour Court in dismissing the petition and in holding that there was no breach of Sections 25F or Section 25G of the Act. Against that order, the present Letters Patent Appeal is filed.

6. Initially, notice was issued and then we admitted appeal by fixing it for final hearing and today, we have heard the parties.

7. Learned counsel for the appellant contended that evidence was produced by the appellant workman. The workman was entitled to the benefit of Section 25F of the

Act and the Labour Court has committed an error of law in not upholding the contention of the appellant-workman. Looking to the order passed by the Labour Court as well as by the learned Single Judge, in our opinion, it cannot be said that any error of law was committed and, hence, to that extent, the order deserves to be confirmed and is, accordingly, confirmed.

8. Regarding Section 25G of the Act, however, in our opinion, an error of law was committed by the Labour Court as well as by the learned Single Judge. In his substantive evidence at Ex.9, the appellant has stated that, after he was discharged from service, another person was appointed at his place by the opponent. There is no cross-examination on that point by the opponent. Thus, there was violation of provisions of Section 25G of the Act. In our opinion, therefore, the substantive evidence of the appellant ought not to have been discarded and ignored by the authorities. An error of law was, therefore, committed by the Labour Court in passing the award without considering the relevant fact. The learned Single Judge has also committed the same error.

9. A preliminary objection was, no doubt, raised by Mr. Vyas, learned Senior Counsel appearing on behalf of the respondent, contending that a Letters Patent Appeal is not maintainable. For that, he submitted that, the learned Single Judge decided Special Civil Application in exercise of supervisory jurisdiction under Article 227 of the Constitution and the provisions of Clause 15 of the Letters Patent could not be invoked by the appellant. He submitted that the appellant himself has stated in paragraph 5 of the petition that he had approached this Court by invoking Article 227 of the Constitution. If it was so, the argument proceeded, no Letters Patent Appeal would be competent.

10. Ms. Shah, on the other hand, submitted that, nomenclature is never considered to be a clinching circumstance and while deciding maintainability or otherwise of an appeal, the Court always looks at the substance of the matter and not the form thereof. She submitted that looking to prayer clause (a) in paragraph 9, it is clear that the petitioner approached this Court for a writ of mandamus and/or any other appropriate writ, order or direction setting aside the impugned order Annexure-D to the petition, which was passed by Labour Court.

11. Relying upon a decision of Full Bench of this

Court in Dilavarsinh Khodubha v. State of Gujarat & Ors., 1995 (1) GLR 110, Ms.Shah contended that after considering leading decisions on the point, the Full Bench observed that, if a prayer is made for issuance of any writ, direction or order, such prayer can only be granted in exercise of power under Article 226 of the Constitution and not under Article 227 of the Constitution. The Full Bench, in paras 12 and 13 observed that a writ of certiorari might have been prayed by a petitioner against an order of a Tribunal or any other adjudicatory body. Such a power could be exercised by the High Court only under Article 226 of the Constitution. Article 227 of the Constitution does not talk of any writ in the nature of writ of habeas corpus, mandamus, etc. It only speaks of power of superintendence over subordinate Courts and inferior Tribunals. In the instant case, a writ was sought which could only be issued in exercise of powers under Article 226 of the Constitution.

12. Mr. Vyas further submitted that, if such a view is taken, almost all decisions of Tribunals can be made subject matter of Letters Patent Appeals. He submitted that a distinction must be made between orders passed by Courts stricto sensu and by Tribunals on the one hand and officials of Government exercising quasi judicial powers on the other hand.

13. In our opinion, however, when the Full Bench has observed that when a writ of certiorari is sought, a learned Single Judge can be said to have exercised power under Article 226 of the Constitution and is subject Letters Patent Appeal, the present appeal cannot be dismissed as not maintainable. In fact, in good old days, a writ of certiorari used to be issued against Crown's Courts, inasmuch as, before the growth of Administrative Law, only Crown's Courts were exercising judicial powers. Now, if in respect of a writ of certiorari, by treating a petition under Article 226 of the Constitution, Letters Patent Appeal was held maintainable, in this case also, the contention that the Letters Patent Appeal is not maintainable cannot be upheld and, hence, the preliminary contention is negatived.

14. As no case has been made out for violation of provisions of Section 25F of the Act, this appeal deserves to be dismissed to that extent. However, there is, in our opinion, an error of law and jurisdiction on finding recorded by the Labour Court and confirmed by the learned Single Judge on the question of violation of

Section 25G of the Act. To that extent, therefore, appeal deserves to be allowed and is, accordingly, allowed.

15. The matter is remanded to the Labour Court. The Labour Court will now permit the parties to adduce evidence on that point and will decide the same after affording opportunity of hearing to the parties. The only question which is to be decided is violation or otherwise of Section 25G. In the facts and circumstances and in the interest of justice, the Labour Court will decide the matter as expeditiously as possible preferably within six months from the date of this order.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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